

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

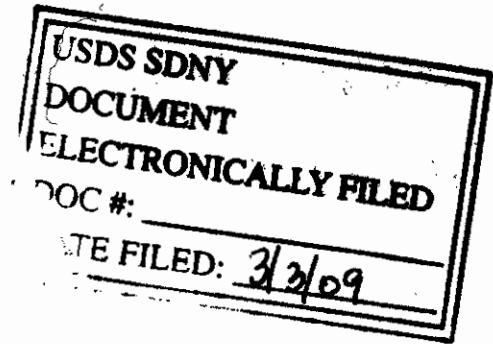
JODY CONCEPCION,

Plaintiff,

-v-

THE CITY OF NEW YORK, *et al.*,

Defendants.



No. 05 Civ. 8501 (RJS) (JCF)  
ORDER

RICHARD J. SULLIVAN, District Judge:

The Court is in receipt of Defendants' letter dated January 30, 2009 (the "January 30 Letter"), submitted in connection with Plaintiff's pending motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, concerning Defendants' Rule 72 appeal of certain trial witness orders (the "Trial Witness Orders") issued by Magistrate Judge James C. Francis.<sup>1</sup> The Court is also in receipt of Plaintiff's letter in response dated February 24, 2009 (the "February 24 Letter").<sup>2</sup> Defendants request that (1) the Court reject three documents submitted by Plaintiff that were filed in connection with her opposition to the Rule 72 appeal and her Rule 11 motion for sanctions;<sup>3</sup> (2) in the event that the these documents are not rejected, the Court toll the date that Defendants' opposition papers to Plaintiff's notice of motion for sanctions be filed; and (3) the Court

<sup>1</sup> The Trial Witness Orders were issued on October 6 & 7, 2008.

<sup>2</sup> The Court notes that Plaintiff's counsel, Karen Wohlforth, requested that she be afforded additional time in which to respond to Defendants' January 30, 2009, letter due to a death in her family. Accordingly, the Court extended the deadline for Ms. Wohlforth's response until February 25, 2009.

<sup>3</sup> The three documents are: (1) Plaintiff's Notice of Motion for Sanctions pursuant to Rule 11(b); (2) Declaration of Karen Wohlforth in Opposition to Defendants' Rule 72 Objections and in Support of Plaintiff's Motion for Sanctions Pursuant to Fed. R. Civ. P. 11(b); and (3) Plaintiff's Opposition to Defendants' Rule 72 Objections and in Support of Plaintiff's Motion for Sanctions. These documents are entered under the docket numbers ("D.E.") 117, 118, and 121, respectively.

enter any other relief that it deems to be just and proper. (See Jan. 30 Ltr. at 3.)

Defendants argue that the three documents should be stricken as being in violation of the Court's scheduling Orders and its Individuals Practices because (1) Plaintiff did not comply with a previous briefing schedule entered by this Court with respect to Defendants' Rule 72 appeal of the Trial Witness Orders; and (2) Plaintiff's Notice of Motion for Sanctions and the supporting declaration were filed after briefing on this matter was closed. (*Id.* at 2.) Specifically, Defendants contend that Plaintiff disregarded the briefing schedule set by the Court on October 23, 2008, which required that Plaintiff's opposition papers to Defendants' Rule 72 appeal be filed and served upon opposing counsel by December 12, 2008. Plaintiff's counsel responds that these documents were initially filed in a timely manner but due to minor technical filing errors, they had to be re-filed. (See Feb. 24 Ltr. at 1.)

The Court finds that Plaintiff's counsel did not willfully commit these technical filing errors; therefore, the Court excuses any inadvertent lateness that resulted pursuant to its discretion to extend time under Rule 6(b) of the Federal Rules of Civil Procedure. Accordingly, the Court denies Defendants' request to reject the three documents at issue. The Court grants Defendants' request for additional time to respond to Plaintiff's motion for sanctions, again pursuant to its discretion to extend time under Rule 6(b). The following briefing schedule with respect to Plaintiff's motion for Rule 11 sanctions is granted accordingly:

Defendants' opposition brief shall be filed and served on or before March 20, 2009; and;

Plaintiff's reply shall be filed and served on or before April 9, 2009.

SO ORDERED.

DATED: March 4, 2009  
New York, New York



RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE